

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A REVISION
TO A SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT GRANTED BY
CITY OF SEATTLE TO LOCKHAVEN
MARINA, INC.,

CONDOMINIUM BUILDERS, INC.,

Appellant,

v.

CITY OF SEATTLE and
LOCKHAVEN MARINA, INC.,

Respondents.

SHB No. 85-19

ORDER DENYING
RECONSIDERATION

On January 8, 1986, we entered our final decision in the above matter. Thereafter, appellant timely moved for reconsideration. Having considered the appellant's motion, and being fully advised, the motion is denied.

In denying this motion for reconsideration we wish to prevent any misunderstanding of our Conclusion of Law VI by declaring that, as

1 pointed out therein, our decision that permit revisions are
2 inappropriate for "substantial developments" in DOE v. Nichols Bros.
3 Boat Builders SHB No. 216 (1976) has been superseded and set aside
4 through subsequent amendment by DOE of the regulation upon which that
5 conclusion was based. An appellant must show only that a proposed
6 development is a "structure" to render a revision inappropriate. WAC
7 173-14-064(2)(b). An appellant need not show that a proposed
8 development is a "substantial development." Our observation that the
9 proposed development here appears to be a substantial development is
10 not conclusive, but is offered for the consideration of the parties in
11 planning subsequent actions on this proposal, if any.

12 SO ORDERED.

13 DONE this 3rd day of February, 1986.

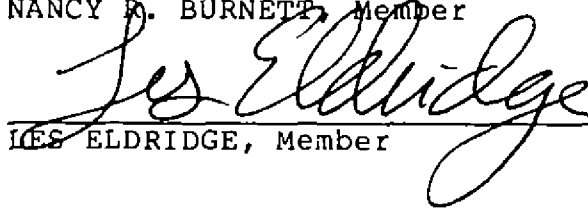
14 SHORELINES HEARINGS BOARD

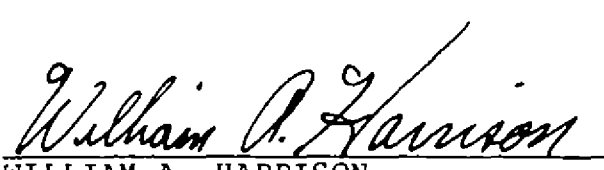
15  1/27/86
16 LAWRENCE J. FAULK, Chairman

17 
18 WICK DUFFORD, Lawyer Member

19 
20 RODNEY M. KERSLAKE, Member

21 See Dissenting Opinion
22 NANCY B. BURNETT, Member

23 
24 LES ELDRIDGE, Member

25 
26 WILLIAM A. HARRISON
27 Administrative Appeals Judge
ORDER DENYING
RECONSIDERATION
SHB No. 85-19

CERTIFICATION OF MAILING

I, Janice M. Keegan, certify that I mailed, postage prepaid, copies of the foregoing document on the 3rd day of February, 1986, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

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JANICE M. KEEGAN
SHORELINES HEARINGS BOARD

BEFORE THE
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STATE OF WASHINGTON

IN THE MATTER OF A REVISION
TO A SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT GRANTED BY
CITY OF SEATTLE TO LOCKHAVEN
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v.

CITY OF SEATTLE and
LOCKHAVEN MARINA, INC.,

Respondents.

SHB No. 85-19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, a request for review of a revision to a shoreline substantial development permit granted by the City of Seattle to Lockhaven Marina, Inc., came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk, Chairman, Wick Dufford, Lawyer Member, Rodney Kerslake, Nancy Burnett, and Les Eldridge, Members, convened at Seattle, Washington on November 6, 1985. Administrative Appeals Judge William A. Harrison presided.

1 Appellant appeared by his attorney, Peter L. Buck. Respondent
2 Lockhaven Marina, Inc., appeared by its attorney, J. Richard
3 Aramburu. Respondent City of Seattle appeared by Gordon S. Crandall,
4 Assistant City Attorney. Reporter Gene Barker provided court
5 reporting services.

6 Witnesses were sworn and testified. Exhibits were examined. From
7 testimony heard, the Shorelines Hearings Board makes these

8 FINDINGS OF FACT

9 I

10 Respondent, Lockhaven Marina, Inc. (LMI) owns and operates a
11 marina near the locks on the Lake Washington ship canal. On the
12 shoreline adjacent to the marina is the Lockhaven Condominium,
13 developed by appellant Condominium Builders, Inc. (CBI).

14 II

15 The land upon which the CBI condominium stands was formerly owned
16 by LMI. In 1977, LMI agreed to sell that land to CBI for the
17 construction of the condominium.

18 III

19 In 1980, LMI undertook to do some work on the marina, concurrently
20 with development of the condominium. On February 11, 1980, LMI
21 applied to the City of Seattle for a shoreline substantial development
22 (SDP), identified as No. 80-12, to allow:

- 23 1. Remove existing marine railroad.
- 24 2. Construct protective bulkhead . . . with a six foot wide
5 walkway along its length.

6 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 85-19

1 3. Installation of the bulkhead to include dredging . . . and
2 backfill . . .

3 4. Remove easternmost float . . .

4 The site diagram in the application for SDP 80-12 also requested:
5 "A strip approx. 25 ft. in width measured from the bulkhead face to be
6 cleared of brush, lightly graded, and landscaped."

7 IV

8 On September 5, 1980, the City of Seattle approved SDP 80-12.

9 V

10 In 1981, CBI conveyed an easement to LMI ". . . for ingress,
11 egress, a marine railway, utilities and other uses customarily
12 incidental to a commercial marina operation . . .". The same was
13 recorded in the month it was executed.

14 VI

15 On January 25, 1985, LMI applied to the City of Seattle to revise
16 its SDP 80-12 to allow construction of a driveway on the 25 foot wide
17 strip which was to be cleared, graded and landscaped under SDP 80-12.
18 The driveway would be some 52 feet in length, 10 feet in width, and be
19 built of crushed rock four inches deep. A four foot width of gravel
20 alongside the driveway would separate it from the walkway mentioned in
21 SDP 80-12.

22 VII

23 The purpose of the driveway would be to provide access for
24 emergency vehicles (e.g., fire and rescue) and for maintenance
25 vehicles (e.g., a truck to bring new rocks for repair of the

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 85-19

1 bulkhead). It is not intended for use by marina patrons in loading or
2 unloading their boats. Carts are provided by LMI for this purpose.

3 VIII

4 On July 3, 1985, the City of Seattle approved LMI's requested
5 revision of SDP 80-12.

6 IX

7 On July 17, 1985, CBI requested review of the revision, which
8 request is the matter now before us.

9 X

10 Any Conclusion of Law which is deemed a Finding of Fact is hereby
11 adopted as such.

12 From these Findings of Fact the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 Appellant, CBI, is a person aggrieved by the granting (revision)
16 of a shoreline substantial development permit under RCW 90.58.180 and
17 WAC 173-14-064(5). Appellant has standing to bring this request for
18 review.

19 II

20 In the case of a shoreline permit revision, there is no
21 requirement of public notice prior to the local government action
22 approving or disapproving the revision. See WAC 173-14-064(1).
23 Rather, one may only ask local government to be apprised of the
24 outcome. WAC 173-14-064(4). Appellant has not shown that anyone
25 asked Seattle to be apprised of the outcome of this revision request.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 85-19

1 Even had CBI done so, it is clear that it learned of the outcome
2 quickly enough to lodge this request for review before us in timely
3 fashion. There has been no showing that notice was inconsistent with
4 the requirements of WAC 173-14-064 or -070.

5 III

6 The area in question is covered by the substantial development
7 permit 80-12 which was revised by Seattle.

8 IV

9 This matter, an appeal of a permit revision, can be brought only
10 on the narrow ground that the revision is not within the "scope and
11 intent" of the permit to be revised. WAC 173-14-064(5).

12 V

13 Under WAC 173-14-064(2), a revision is within the scope and intent
14 of the original permit where it meets five criteria enumerated (a)
15 through (e). Appellant raises -064(2)(b) in urging that the proposed
16 driveway constitutes a new structure in violation of that rule. We
17 agree. The term "structure" is not defined specially in chapter
18 173-14 WAC nor in the Seattle Shoreline Master Program (SSMP). We
19 must give such a word its usual and ordinary meaning. Stasny v. Board
20 of Trustees, 32 Wn.App. 239, 253, 647 P.2d 496 (1982). As we have
21 noted in SAVE v. City of Bothell and the Koll Co., SHB No. 82-29, et
22 al. (1983), Webster's Third New International Dictionary (unabridged)
23 defines structure to mean: (1) "the action of building," (2)
24 "something constructed or built." The proposal here is to construct a
25 gravel driveway for emergency and maintenance vehicles. Such a

1 driveway is a "structure." Because it is absent from the site plan of
2 SDP 80-12, the driveway is a "new" structure. Therefore it cannot be
3 added by permit revision as it is beyond the scope and intent of the
4 original permit. WAC 173-14-064(2)(b).

5 VI

6 In Department of Ecology v. Island Co. and Nichols Bros. Boat
7 Builders, SHB No. 216 (1976), we held that the "scope" relates to the
8 actual substantial developments which may be constructed under the
9 original permit. We then held that a revision may add no new
10 substantial developments. The facts of that case arose before
11 Department of Ecology amended WAC 173-14-064 to define scope and
12 intent. However, the amendments were known when the opinion was
13 written. We noted that:

14 In amending WAC 173-14-064, effective July 27, 1976,
15 the Department of Ecology clarified the limits it
16 places on a permit revision and specifically
17 construed "scope and intent" as meaning, in part,
18 "...PROVIDED that revisions involving new structures
19 not shown on the original site plan shall require a
20 new development permit." The Board, in its
21 interpretation of the earlier language applicable to
22 this [pre-amendment] case does not go this far but is
23 in effect requiring that revisions involving new
24 structures not shown on the original permit or its
25 supporting documents which in themselves are
26 substantial developments shall require a new
27 development permit. (Emphasis in original.)

22 The 1976 amendments comprise the current rule. Thus, revisions may
23 not be had for new structures. Whether the proposed driveway is a
24 substantial development is therefore not before us; but, it appears to
25 be. If that is so, LMI should apply for a new substantial development
26 permit. (See RCW 90.58.030(3)(e).)

VII

While the merits of further proceedings are not before us, we observe that the proposed driveway does not appear to constitute any change of use but rather is incidental or accessory to the principal, marina, use. See SSMP Sections 24.60.240 and .245. Moreover, if expressly conditioned against regular use for loading and unloading boats, together with appropriate signs and enforcement, approval of the driveway would not, on this record, cause substantial adverse environmental impact.

VIII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

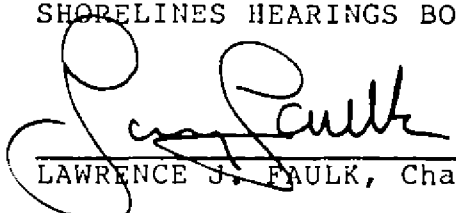
From these Conclusions of Law the Board enters this


ORDER

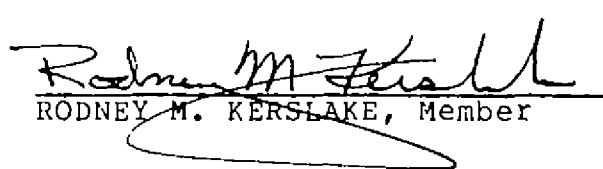
The permit revision granted by the City of Seattle to Lockhaven Marina, Inc., on July 3, 1985, is vacated.

DONE at Lacey, Washington, this 8th day of January, 1985.

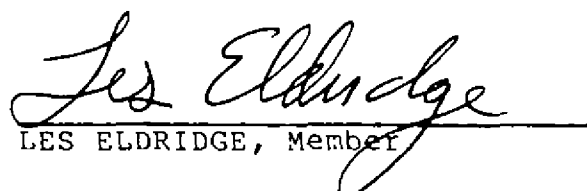
SHORELINES HEARINGS BOARD

 12/30/85
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member


RODNEY M. KERSLAKE, Member

See dissenting opinion.
NANCY R. BURNETT, Member


LES ELDRIDGE, Member


WILLIAM A. HARRISON
Administrative Appeals Judge

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
SHB No. 85-19

1 DISSENTING OPINION - NANCY R. BURNETT

2
3 I have no disagreement with the Findings of Fact, nor is there a
4 quarrel with Conclusions of Law I through IV. In Conclusions V and VI
5 it is stated that the proposed driveway is a new structure because the
6 actual design was not included in the original site plans. Seattle
7 has judged that the gravel driveway is an appropriate use for the
8 property as an accessory to the marina. I agree. In addition, the
9 easement granted to LMI by CBI clearly states that the 25-foot strip
10 at issue may be used for ingress and egress to LMI's marina slips.

11 To compare this case with SHB No. 82-29, SAVE v. City of Bothell
12 and The Koll Company, and SHB No. 216, WDOE v. Island County and
13 Nichols Bros. Boat Builders is ludicrous. The scope and magnitude of
14 the permits and the environmental impacts in those two cases is far,
15 far greater than that in the instant case. They are not genuinely
16 comparable.

17 In Conclusion VII the majority of the Board agrees that the
18 driveway is incidental or accessory to this marina and would not cause
19 adverse environmental impact. However, they suggest that a new
20 application for a substantial development permit (with conditions
21 imposed) would be accepted and granted before a local hearing or
22 review process is even scheduled. Further, this clearly is an
23 imposition on any further Board action that cannot be guaranteed to
24 any parties involved in future actions in the event of an appeal.
25 This case was obviously handled judiciously and without prejudice by
26

1 the local government (Seattle). It has never been proven that notice
2 was inadequate. No public access will be diminished, no adverse
3 environmental impact imposed; in fact, no violation of the Shoreline
4 Management Act. To impose upon Seattle and the applicants brand new
5 permit processing because of a mere WAC technicality is a disservice
6 to all parties involved. Here the Board has become too enthralled
7 with technicalities: dotted I's and crossed T's. They have forgotten
8 that their real purpose is to review matters for their substantial
9 compliance with pertinent local shoreline master program(s) and the
10 Shoreline Management Act.

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14 NANCY R. BURNETT, Member
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